

September 23, 2013

Honorable Tom Vilsack
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250-3700

Ambassador Michael Froman
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Secretary Vilsack and Ambassador Froman:

It is with great urgency that the undersigned organizations write to request that the United States Department of Agriculture (USDA) delay enforcement and extend the education and outreach program attendant to the Agricultural Marketing Service's (AMS) final rule, *Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts* (the Rule). 78 *Fed. Reg.* 31367 (May 24, 2013). Specifically, we request that enforcement of the Rule be delayed until the World Trade Organization (WTO) reaches a final resolution on the Canadian and Mexican government's pending complaint before the WTO regarding the Rule.

Several of the undersigned organizations' members produce more than 99 percent of the meat products processed in the United States and the National Cattlemen's Beef Association and the National Pork Producers Council are the two largest livestock producer organizations in the U.S. In addition, the National Grocers Association represents thousands of independent retail and wholesale grocers throughout the U.S. As such, the members of these collective organizations have a substantial and vested interest in the Rule's application and enforcement.

As the enforcement deadline for the Rule approaches, many companies and livestock producers face the expensive and arduous task of re-tooling their operations to comply with the new labeling requirements. Significantly, the Rule effectively bans the practice of commingling livestock and the muscle cuts of meat derived therefrom with different origin categorizations. Prior to May 23, 2013, commingling was an accepted and important industry practice. Members of the undersigned organizations, especially those located closer to the northern and southern borders, will face substantial economic hardships if required to implement the changes necessary to comply with the new labeling requirements.

AMS's country of origin regulations are no stranger to WTO scrutiny. The 2009 Rule, which was far less discriminatory against Canadian and Mexican livestock than the 2013 iteration, suffered two defeats before the WTO. It was deemed a technical trade barrier that discriminated against livestock from two of the U.S.'s most important agricultural trading partners, Canada and Mexico, and AMS was forced to re-write part of that 2009

Rule. The Canadian and Mexican governments are now challenging the 2013 Rule before the Dispute Settlement Body of the World Trade Organization. If the Canadian and Mexican WTO challenge is successful, then USDA will be faced with the choice of reformulating another country of origin regulation, seeking amendments to the underlying statute, or subjecting U.S. industries to substantial retaliatory tariffs.

The undersigned, along with most WTO experts, believe that the Rule is vulnerable to this WTO challenge. It is likely that the resolution of the WTO dispute will result in AMS being forced to develop yet *another* COOL Rule in an attempt to meet the United States' WTO treaty obligations or seek amendments to the underlying statute. Such a result would mean that the entire meat supply chain will be in the same position in just a few years – devoting time and financial resources to bring themselves into compliance with *another* COOL Rule.

Given the uncertain fate of the Rule, the undersigned request that AMS delay enforcement of the new labeling regulation pending the outcome of the present WTO challenge. Staying enforcement until the WTO dispute is resolved will reduce the uncertainty that the entire meat supply chain faces in complying with a regulation that likely will be deemed noncompliant with the United States' WTO obligations. Such a delay will also eliminate imposing the tens if not hundreds of millions of dollars in costs that AMS calculated would be incurred by the supply chain to comply with a rule that may eventually be scrapped in a relatively short timeframe. Moreover, such a delay will not adversely affect any other interested parties. Since May 23 the meat industry and retailers have continued to provide country of origin information consistent with the 2009 rule promulgated by AMS and that process will continue.

For the foregoing reasons, the undersigned request that AMS delay enforcement of the Rule by extending the education and outreach period pending the resolution of the WTO dispute. Such a delay will benefit all sectors of the meat supply chain, as well as the consumer, who ultimately will bear the cost of the Rule if implemented. In short, the requested delay will reduce uncertainty, reduce incurring unnecessary compliance costs, protect vulnerable small businesses, and prevent unnecessary costs from being passed onto the consumer.

Respectfully submitted,

American Association of Meat Processors
American Meat Institute
National Cattlemen's Beef Association
National Grocers Association
National Pork Producers Council
North American Meat Association
Southwest Meat Association

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